

4. **POORAN SHIVHARE,**

.....RESPONDENTS

**(BY SHRI M.P. SHARMA WITH MS. GURUSHARAN KAUR - ADVOCATES)**

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 Reserved on : 17<sup>th</sup> of February, 2023  
 Pronounced on : 28<sup>th</sup> of April, 2023  
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*This petition having been heard and reserved for orders, coming on for pronouncement this day, **Hon'ble Shri Justice Satyendra Kumar Singh** pronounced the following:*

**ORDER**

This petition, under Article 227 of the Constitution of India, has been preferred against the order dated 20/6/2022, passed by the Court of 10<sup>th</sup> District Judge, Gwalior in Miscellaneous Civil Appeals bearing MCA Nos. 64/2022, 46/2022, 47/2022 and 48/2022, whereby, the order dated 8/3/2022, passed by the Court of 10<sup>th</sup> Civil Judge, Senior Division, Gwalior in Civil Suit bearing No. RCS-A/339/2021, was set aside and the case was remanded back to the Trial Court for re-consideration on the applications, filed under Order XXXIX Rule 1 and 2 CPC on behalf of the petitioners as well as the respondents.

2. Brief facts giving rise to this petition are that the petitioners filed a Civil Suit bearing RCS No. A/339/2021, before the Court of 10<sup>th</sup> Civil Judge, Senior Division, Gwalior for declaration of title and injunction, alongwith an application, under Order XXXIX Rule 1 & 2 of C.P.C. for grant of temporary injunction, over a piece of land admeasuring 80ft x

150ft, i.e. 12000 sqft, on the eastern side of which, there is Agra Bombay Road, on the western side, there is a land belonging to Smt. Anjali Jain, on the northern side, there is a land belonging to defendants no.3 and 4 and on the southern side, there is a land belonging to Smt. Anjali Jain and Saroj Devi, at Agra Bombay Road, Tehsil and District Gwalior. Petitioners' pleaded therein that the aforesaid disputed land is part of the land bearing survey no. 855(0.376 hect) and 855/1071 (0.115 hect.), situated at Patwari Halka No. 54, ward No. 64, village Shankarpur, Agra Bombay Road, Tehsil and District Gwalior.

3. Petitioners pleaded that initially the lands bearing survey nos. 853 (0.021 hect.), 854 (0.125 hect.), 855 (0.376 hect.), 856-Min (0.219 hect.) and 855/1071(0.115 hect.), all situated at Patwari Halka No. 54, ward No. 64, village Shankarpur, Agra Bombay Road, Tehsil and District Gwalior, were purchased by the respondent no.1, Yaadram and respondent no.2, Rampal from Chandrasen Rao through his power of attorney holder Shivaji Rao vide registered sale deed dated 15/1/1980. Thereafter, respondent nos. 1 & 2, vide lease deed dated 1/6/1980, gave all the above lands to Ashok Kumar, Ramkumar, Suresh Kumar, Subhashchandra, Ramsingh and Uma Devi on lease for three years. In the year 1990-91, Ashok Kumar and others, claiming themselves as 'Mourushi Kashtakaar' of the above lands, filed an application under Sections 169 and 190 read with Section 110 of MP Land Revenue Code, before the Court of Tahsildar, Gwalior for mutating the same in their name, wherein respondent nos. 1 & 2 admitted the claim of Ashok Kumar and others through their power of attorney holder, on the basis of which, learned Court of Tehsildar Gwalior, vide order dated 12/03/1991, mutated all the above lands in the name of Ashok Kumar and others,

who whereafter, sold the same to Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior, vide sale deed dated 7/5/1991.

**3.1.** Petitioners further pleaded that Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior, vide registered sale deed dated 14/11/1991, sold the disputed 0.112 hectare land, which is part of the land bearing survey no. 855 (0.376 hect.) and 855/1071 (0.115 hect.) to Saroj Devi and Sudharani, who got the disputed land mutated in their name. They constructed boundary wall surrounding the above land and after diversion, got constructed walls of two rooms on the western side of the land. Petitioners purchased the above 12000 sqft disputed land from Rajendra Agrawal, Deepak Agrawal, Ankur Agrawal, Mayur Agrawal (all legal heirs of late Saroj Devi) and Sudharani vide two registered sale deeds dated 6/6/2020 and 20/3/2020, and since then they are in possession of the same. The boundary wall, constructed on the northern side of the disputed land, in between petitioners' land and the land belonging to respondent nos. 3 & 4, was damaged due to rains and the construction materials of which were taken away by the respondents, who thereafter, started creating hurdle in repairing the said wall and trying to encroach upon the disputed land, hence, they be restrained from interfering in the possession of the petitioners and creating hurdle in constructing/repairing the aforesaid boundary wall.

**4.** Respondent nos. 1 & 2 and 3 & 4, have denied all the aforesaid facts and filed their separate counter claims alongwith applications, filed under Order XXXIX Rule 1 & 2 of C.P.C., stating therein that the respondent nos. 1 & 2 never gave their lands bearing survey nos. 853 (0.021 hect.), 854 (0.125 hect.), 855 (0.376 hect.), 856-Min (0.219 hect.) and 855/1071 (0.115 hect.), all situated at Patwari Halka No. 54,

ward No. 64, village Shankarpur, Agra Bombay Road, Tehsil and District Gwalior, to Ashok Kumar and others on lease and the lease deed dated 1/6/1980 executed in this regard is forged and fabricated. Order of mutation of the aforesaid lands in the name of Ashok Kumar and others, passed by the Tehsildar was passed without jurisdiction and without giving an opportunity of hearing to the respondents, hence the same was null and void. Ashok Kumar and others were not authorized to sell the aforesaid lands to Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior and registered sale deed dated 7/5/1991, executed in this regard is null and void. Consequently, sale deed dated 14/11/1991, executed by Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior in favour of Saroj Devi and Sudharani, and subsequent sale deeds dated 6/6/2020 and 20/3/2020, executed by Sudharani and legal heirs of late Saroj Devi in favour of the petitioners with regard to the disputed land are also null and void.

**4.1.** Respondents further pleaded that 12000 sqft of land, which is referred here in the matter as disputed land, is part of the land bearing survey nos. 855 and 855/1071, and belongs to respondent nos. 1 & 2, while the land and construction made thereupon, situated on the western side of the above land, shown in red colour in the plaint map, and also the land situated on the northern side of the disputed land is part of the land bearing survey nos. 845, 846, 847 and 848, and belong to respondent nos. 3 & 4. There was neither any boundary wall on the northern side of the disputed land, nor any room was constructed on the western of the disputed land. Respondents are in the possession of the disputed land since 15/1/1980, and the petitioners, on the basis forged and fabricated sale deeds, are trying to encroach upon the respondents'

land, therefore, they be restrained from interfering in the respondents' possession over the disputed land.

5. Learned Trial Court vide order dated 8/3/2022 although partially allowed petitioners' application filed under Order Order XXXIX Rule 1 & 2 of CPC and restrained the respondents from interfering in their possession over the disputed land, but rejected petitioners' prayer with regard to restraining the respondents from interfering in constructing the boundary wall on the northern side of the disputed land. By the same order, learned Trial Court rejected all the three applications filed by the respondents under Order XXXIX Rule 1 & 2 of CPC.

6. Being aggrieved by the aforesaid order, petitioners filed Miscellaneous Civil Appeal bearing MCA No.64/2022, while respondents no.1 & 2 and 3 & 4 filed Miscellaneous Civil Appeal bearing MCA Nos.46/2022 and 47/2022 respectively and respondents no.1 to 4 also filed Miscellaneous Civil Appeal bearing MCA No.48/2022 before the Court of 10<sup>th</sup> District Judge, Gwalior, who by impugned common order dated 20/6/2022, disposed of all the aforesaid four appeals, filed under Order 43 Rule 1 of CPC. Miscellaneous Civil Appeal bearing MCA No. 64/2022, filed by the petitioners was dismissed and Miscellaneous Civil Appeals bearing MCA Nos.46/2022, 47/2022 and 48/2022, filed by the respondents were partially allowed and the order dated 8/3/2022, passed by the Court of 10<sup>th</sup> Civil Judge, Senior Division, Gwalior, restraining the respondents to interfere in the petitioners' possession over the disputed land was set aside and the case was remanded back to the Trial Court for consideration of all the four applications, filed by the parties, under Order XXXIX Rule 1 & 2 of CPC, afresh and to pass an appropriate order after taking into

consideration all the documents filed by the respondents also.

7. Aggrieved by the aforesaid impugned order passed by the Court of 10<sup>th</sup> District Judge, Gwalior, respondents no.1 & 2 and 3 & 4 filed separate Review Applications, under Order 47 Rule 1 read with Section 151 of CPC, bearing MJC Nos.439/2022 and 440/2022. Alongwith above applications, they jointly filed one more Review Application under Order 47 Rule 1 read with Section 151 of CPC bearing MJC No.438/2022. Learned First Appellate Court vide order dated 13/9/2022, rejected all the above three applications.

8. Learned counsel for the petitioners submits that the petitioners had purchased 12000 sq.ft. of land, which is part of the land bearing survey No.855 and 855/1071, situated in village Shankarpur, Tehsil and District Gwalior, by two registered sale deeds dated 20/3/2020 and 6/6/2020. The aforesaid land was covered by a boundary wall and this fact is mentioned in both the above sale deeds executed in favour of the petitioners as well as in the sale deed executed in favour of the predecessor of the petitioners. The learned Trial Court by order dated 8/3/2022 found *prima facie* case in favour of the petitioners and also the fact that they are in legal possession of the aforesaid land and therefore, restrained the respondents to interfere in the possession of the petitioners, but learned First Appellate Court set aside the above order passed by the Trial Court in a very casual manner without discussing the findings given by the Trial Court. It has nowhere stated that how the sale deeds dated 27/11/1991 and 17/2/1994, executed by Aditya Grih Nirman Sahkari Samiti in favour of Laxmandas Agarwal and Anjali Jain & Saroj Jain respectively, are relevant in the matter. Both the above sale deeds pertain to the adjoining lands, which have no relevance in the

matter. It has not specifically been mentioned that apart from above sale deeds, which documents of the respondents have not been taken into consideration which was having material bearing while deciding the application under Order XXXIX Rule 1 and 2 of CPC.

**8.1.** Learned counsel for the petitioners further submits that the learned First Appellate Court was having ample power to see the whole record and come to its own conclusion, therefore, only on the ground that the documents submitted by the respondents have not been taken into consideration, setting aside the order passed by the Trial Court and remanding the matter back for reconsideration is apparently contrary to law. In view of proviso to Section 115 of CPC only miscellaneous petition lies against the order passed in miscellaneous appeal by the First Appellate Court and not the revision, therefore, objection raised by the respondents in this regard is unsustainable. The First Appellate Court has not gone through the findings given by the learned Trial Court and has not perused the record, therefore, the impugned order is liable to be set aside and, hence, it may be set aside. He relied upon the judgment passed by this Court in the case of **Khakan Mohd. Khan vs. Sikander Khan and others** reported in **2006 (3) MPWN 56** and the judgment passed by the Supreme Court in the case of **State of Jharkhand vs. Surendra Kumar Srivastava and others** reported in **AIR 2019 SC 231**.

**9.** Learned counsel for the respondents raised preliminary objections about the maintainability of the petition and submits that vide impugned order dated 20/6/2022, miscellaneous appeal bearing MCA No.64/2022 filed by the petitioners as well as miscellaneous appeals bearing MCA Nos.46/2022, 47/2022 and 48/2022, filed by the respondents, were

decided, therefore, separate miscellaneous petitions should be filed with regard to each of the above miscellaneous civil appeals, and hence, this single petition is not maintainable and is liable to be dismissed on this sole ground. He submits that against impugned order, the petitioners were having alternate remedy to file revision petition under Section 115 of CPC, therefore, this petition, filed by them under Article 227 of the Constitution of India is not maintainable and liable to be dismissed on this ground also. He submits that it is settled law that the scope of interference under Article 227 of the Constitution of India is very limited and can only be invoked if order suffers from any jurisdictional error, palpable perversity or procedural impropriety. In the instant case, there is nothing on record on the basis of which it can be said that the impugned order is perverse, therefore, the petition is liable to be dismissed on this ground also.

**9.1.** Learned counsel for the respondents further submits that the Learned First Appellate Court had rightly found that the learned Trial Court has not taken into consideration the documents filed by the respondents. Petitioners have suppressed material facts and have not come to the Court with clean hands. They are neither owner of the disputed land nor are in the possession of the said land. Petition is devoid of merit, hence, be rejected. Learned counsel for the respondents have relied upon the order passed by this Court in the case of **Jumman Khan vs. Rajendra Narain Dubey** reported in **MPWN 1995 (1) 182**, **Deepak Panch and another vs. Sent Bank Home Finance Limited and others** reported in **AIR 2011 CHHATTISGARH 32**, **Anant Singh and another vs Govind and others** reported in **1999 REVENUE NIRNAY 99**, **Babulal Sharma vs Ramesh Sharma** reported in **2017**



**(III) MPWN 127, Bitti Adhya (Smt) vs State of M.P. And others** reported in **2017 (II) MPWN 108** and the order passed by the Apex Court in the case of **Mohd. Yunus vs Mohd. Mustaqim and others** reported in **AIR 1984 SUPREME COURT 38**.

**10.** Heard learned counsel for both the parties and perused the record.

**11.** Admittedly, the learned First Appellate Court, i.e., the Court of 10<sup>th</sup> District Judge, Gwalior, vide impugned common order dated 20/6/2022, has disposed of all the four appeals, filed under Order 43 Rule 1 of CPC, against the order dated 8/3/2022, passed by the Trial Court, i.e., the Court of 10<sup>th</sup> Civil Judge, Senior Division, Gwalior, whereby the petitioners application, filed under Order 39 Rule 1 and 2 of CPC, was partially allowed and the respondents' applications, filed under Order 39 Rule 1 and 2 of CPC, were rejected and they were restrained from interfering in the petitioners' possession over the disputed land. In the case of **Jumman Khan (supra)**, cited by the learned counsel for the respondents, single revision was filed against the orders passed in four miscellaneous appeals, filed under Order 43 Rule 1 of CPC, therefore, the facts of the instant case are entirely different from the facts of the aforesaid cited case, and hence, the contention raised by the learned counsel for the respondents about the maintainability of the petition on this ground has no force at all.

**12.** From bare perusal of the amended provisions of the first proviso to Section 115 of the CPC, it is apparent that civil revision shall not lie against an order of interim injunction, passed under Order 39 Rule 1 & 2 of CPC. Amended provisions of proviso to Section 115 of CPC are as follows:

**115. Revision [(1)]** The High Court may call for

the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

2[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

3[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.]

4[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

*Explanation--*.In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]

**13.** In the case of **Deepak Panch and another vs. Sent Bank Home Finance Limited and others**, cited by the learned counsel for the respondents, facts are entirely different, wherein instead of revision, petition under Article 227 of the Constitution of India, was filed against the order passed by the Court of Chief Judicial Magistrate under Section 14 of SARFAESI Act. In the instant case, since no alternate remedy was

available to the petitioners against the impugned order passed by the First Appellate Court, i.e., the Court of 10<sup>th</sup> District Judge, Gwalior under Order 43 Rule 1 of CPC, therefore, objection raised by the learned counsel for the respondents about the maintainability of the petition on this ground also has no force at all.

**14.** So far as the issue with regard to the scope of extraordinary constitutional jurisdiction of the High Court under Article 227 of Constitution of India, is concerned, as held by this Court in the cases of **Anant Singh and another vs Govind and others (Supra)**, **Babulal Sharma vs Ramesh Sharma (Supra)** and **Bitti Adhya (Smt) vs State of M.P. And others (Supra)** and also by the Apex Court in the case of **Mohd. Yunus vs Mohd. Mustaqim and others (Supra)**, all cited by the learned counsel for the respondents, it is settled law that the extraordinary constitutional jurisdiction conferred on the High Court under Article 227 of Constitution of India, is a supervisory jurisdiction and its scope is limited and can only be exercised if order suffers from any jurisdictional error, palpable perversity or procedural impropriety.

**15.** In the instant case, this fact is admitted that the lands bearing survey nos. 853 (0.021 hect.), 854 (0.125 hect.), 855 (0.376 hect.), 856-Min (0.219 hect.) and 855/1071 (0.115 hect.), all situated at Patwari Halka No. 54, ward No. 64, village Shankarpur, Agra Bombay Road, Tehsil and District Gwalior, were purchased by the respondent no.1, Yaadram and respondent no.2, Rampal from Chandrasen Rao through his power of attorney holder Shivaji Rao vide registered sale deed dated 15/1/1980. Petitioners' case is that the respondents no. 1 & 2 vide lease deed dated 1/6/1980, gave all the above lands to Ashok Kumar, Ramkumar, Suresh Kumar, Subhashchandra, Ramsingh and Uma Devi

on lease for three years, who thereafter, in the year 1990-91, claiming themselves as '*Mourushi Kashtakaar*' of the above lands, got mutated all the above lands in their name and thereafter, vide sale deed 7/5/1991, sold the same to Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior.

**16.** Petitioners have pleaded that Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior, vide registered sale deed dated 14/11/1991, sold a part of the land bearing survey no. 855 (0.376 hect.) and 855/1071 (0.115 hect.) admeasuring 0.112 hectare land, which is said to be disputed here, to Saroj Devi and Sudharani, and thereafter, the legal heirs of late Saroj Devi alongwith Sudharani vide two registered sale deeds dated 6/6/2020 and 20/3/2020, sold the same to the petitioners and since then the petitioners are in the possession of the said land. Petitioners, in their support, have filed copy of the lease deed dated 1/6/1980, said to be executed by the respondents no. 1 & 2, in favour of Ashok Kumar and others, copy of the mutation order dated 12/03/1991, passed by the Court of Tehsildar Gwalior in favour of Ashok Kumar and others, copy of the registered sale deed dated 14/11/1991, executed by Ashok Kumar and others in favour of Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior, copy of the registered sale deed, executed by above Samiti in favour of Saroj Devi and Sudharani and copies of the registered sale deeds dated 6/6/2020 and 20/3/2020, executed in favour by the legal heirs of Saroj Devi and Sudharani in favour of the petitioners alongwith copies of revenue records and other documents.

**17.** Respondents have denied to execute the lease deed dated 1/6/1980, in favour of Ashok Kumar & others, and have challenged all the documents, filed by the petitioners, but it has nowhere mentioned by them that any of the above documents has ever been cancelled or

declared null and void by any authority. On the basis of aforesaid material produced on record, learned Trial Court finding *prima facie* case in favour of the petitioners, and also their legal possession over the disputed land, vide order dated 8/3/2022 partially allowed their application, filed under Order Order 39 Rule 1 & 2 of CPC, and restrained the respondents from interfering in their possession over the disputed land. By the same order, rejected all the three applications filed by the respondents under Order 39 Rule 1 & 2 of CPC.

**18.** Learned First Appellate Court vide impugned common order dated 20/6/2022, partially allowing miscellaneous civil appeals, filed by the respondents, has set aside the order dated 8/3/2022, passed by the Trial Court and remanded back the case to the Trial Court for consideration of applications, filed by the petitioners and respondents, under Order 39 Rule 1 & 2 of CPC, afresh only on the ground that copy of registered sale deed dated 24/11/1991 and 17/2/1994, both executed by Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior, in favour of Laxman Das Agrawal & others and Saroj Devi & Anjali Devi, alongwith other documents, filed by the respondents have not been taken into consideration and applications filed by the respondents under Order Order 39 Rule 1 & 2 of CPC, have not been considered.

**19.** Upon perusal of the copies of the sale deeds, mentioned in the impugned order, it is apparent that the registered sale deed, executed by Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior, in favour of Laxman Das Agrawal & others, was executed on 27/11/1991 instead of 24/11/1991, in respect of the rest part of the land bearing survey nos. 855 and 855/1071 alongwith other lands, while the registered sale deed, executed by Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior, in

favour of Saroj Devi, Uma Devi & Anjali Devi, was executed on 16/2/1994 instead of 17/2/1991 in respect of land bearing survey nos. 854 and 856 and has no concern with the disputed land. Infact, both the above sale deeds support the petitioners' case that Aditya Grih Nirman Sahkari Samiti Maryadit, Gwalior was the owner of all the lands, which were initially purchased by the respondents no. 1 & 2, and apart from disputed land, sold adjacent lands to several other persons. Apart from above documents, it has nowhere mentioned in the order that which document has not been taken into consideration by the Trial Court.

**20.** Hence, it can not be said that while passing order dated 8/3/2022, the learned Trial Court, had ignored any relevant document, which was required to be considered at the time of consideration of applications, filed by both the parties under Order 39 Rule 1 & 2 of CPC for grant of interim injunction. For the sake of argument, if it is assumed that any such document was left and not considered by the Trial Court, then being appellate authority, the learned First Appellate Court was competent enough to consider all the material produced on record and to pass an appropriate order in the matter. It is pertinent to mention here that since an order passed, under Order 39 Rule 1 & 2 of CPC, is an interim order, therefore, it is not required to mention about each and every document, produced on record, in the order and mentioning of relevant documents is sufficient.

**21.** In view of the above discussion, it is apparent that the learned First Appellate Court has passed the impugned order dated 20/6/2022, in a very superficial manner without going into the merits of the case, and hence, perverse and liable to be set aside. Thus, invoking extraordinary constitutional jurisdiction, provided under Article 227 of

Constitution of India, the aforesaid impugned order dated 20/6/2022 passed by the Court of 10<sup>th</sup> District Judge, Gwalior in Miscellaneous Civil Appeals bearing MCA Nos. 64/2022, 46/2022, 47/2022 and 48/2022 is **set aside** and the matter is remitted back to the learned First Appellate Court, i.e., Court of 10<sup>th</sup> District Judge, Gwalior with a direction to decide the matter afresh after giving opportunity of hearing to the parties as early as possible preferably within a period of **one month**.

**22.** Accordingly, the petition is finally **disposed of**.

(SATYENDRA KUMAR SINGH)  
JUDGE

**Arun\***